

E-FILED - 3/18/09

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FLOYD SMITH, et al.,)	No. C 04-4793 RMW (PR)
)	
Plaintiffs,)	ORDER GRANTING
)	DEFENDANTS' MOTION TO
)	DISMISS
vs.)	
)	
J.S. WOODFORD, et al.,)	
)	
Defendants.)	(Docket Nos. 18, 19, 22, 23, 25,
_____)	26, 27, 28, 29, 31, 34 & 36)

Plaintiff, a condemned California state prisoner who is proceeding pro se, brings the instant civil rights action under 42 U.S.C. § 1983, alleging that officials of San Quentin State Prison ("SQSP") discriminated against him because of his supposed homosexuality.¹ Defendants move to dismiss on the ground that plaintiff failed to exhaust SQSP's administrative remedies before bringing suit in federal court. Plaintiff has filed an opposition. After reviewing the record and the parties' filings, the court concludes that the motion should be granted and all motions denied.

¹ Plaintiff, along with another inmate, Calvin Chism, originally filed this action in the Marin County Superior Court. Defendants timely removed the action to federal court. After removal, the court terminated Chism from the instant matter and allowed him to file his own separate action. (Order of Partial Dismissal at 1.)

Order Granting Defendants' Motion for Summary Judgment
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BACKGROUND

This action arises from plaintiff's allegation that defendant Dassel, an officer at SQSP, made a discriminatory statement to plaintiff on March 10, 2003. Plaintiff alleges that on that day defendant Dassel said in front of other prisoners that plaintiff "has sugar in his tank," meaning that plaintiff is a homosexual. (Pl.'s Opp. to Defs.' Mot. to Dismiss (Docket No. 36) ("Pl.'s Opp.") at 10.)² According to plaintiff, one officer smiled and another laughed in response. (*Id.*) Plaintiff alleges in his complaint that this behavior was part of a larger pattern of behavior plaintiff had experienced from defendants, who allegedly discriminated against him because of his supposed sexual orientation by taking away his contact visits with his children, assigning him to an exercise yard with poor facilities, disciplining him based on false evidence, and assigning him to a bad cell. (Order of Partial Dismissal (Docket No. 16) at 4.)³ Plaintiff asserts that he exhausted his administrative remedies regarding these claims. (Second Am. Compl. at 1-2.)⁴

Defendants, however, dispute this. The following facts appear to be uncontested. It is assumed that plaintiff put forth a grievance at the informal level of review regarding defendants' alleged actions. Next, plaintiff filed a 602 grievance form in the second level of review, also known as the first formal level of review. Along with his claim regarding the March 10th incident, plaintiff attached other grievances, alleging *inter alia* that defendant Dassel had committed a "crime of hatred" and "act of terror" by implying that he would tell others that plaintiff had a medical condition called enuresis, which causes bedwetting. After an investigation into the March 10th claims, the first level formal reviewer informed plaintiff that his allegations could not be substantiated. (Defs.' Mot. to Dismiss ("MTD"), Decl. of T. Emigh, Ex. B, Part 1 at B-005 (Second Level Review Decision).)

² Plaintiff entitles this filing as a request "to deny defendants' Rule 12(b) motion [to dismiss]." (Docket No. 36.) The court regards this as plaintiff's opposition to defendants' motion to dismiss.

³ In this same order, the court dismissed plaintiff's claims regarding defendants' alleged opening of his mail and stealing his property, as well as claims regarding an alleged relationship between inmates, prison officials, and confidential informants. (*See* Docket No. 16 at 2-3).

⁴ The Second Amended Complaint (Docket No. 11) is the operative pleading herein.

1 In response, plaintiff appealed his claims to the second formal level of review.
2 Significantly, plaintiff was told before the second level formal reviewer issued his decision that
3 plaintiff could not add new issues on appeal. (Id., Ex. B, Part 2 at B-044 (SQ Inmate/Parolee
4 Appeals Screening Form).) In fact, the sole issue identified by the second level formal reviewer
5 was “[w]hether or not [plaintiff] was verbally disrespected by East Block staff on March 10,
6 2003.” Id., Ex. B., Part 1 at B-005.) Plaintiff’s second level formal reviewer also found that
7 plaintiff’s claim was unsubstantiated. (Id. at B-006.)

8 Plaintiff appealed this decision to the director’s level, the fourth and final stage of review.
9 The final reviewer stated that “in the event that staff misconduct was substantiated, the
10 institution would have taken the appropriate [and confidential] course of action.” Having
11 reviewed the appeal, the final reviewer found that plaintiff had failed to provide any “new or
12 compelling information that would warrant a modification of the decision reached by the
13 institution.” (Id. at B-001.) The final reviewer did not render a decision on the other issues
14 plaintiff had presented in the thirty-five pages of other material he submitted with his final
15 administrative appeal, which plaintiff submitted despite the earlier warnings that new issues
16 would not be considered.

17 DISCUSSION

18 Defendants contend that plaintiff failed to exhaust the four-step administrative
19 grievance procedure available at SQSP for the issues presented in his complaint. (MTD at 2.)
20 More specifically, defendants contend that plaintiff “has properly exhausted one issue — that an
21 officer used derogatory language about him [on March 10, 2003].” (Id.)

22 According to defendants, SQSP’s four-step grievance process, which is formally set forth
23 in Cal. Code Regs., tit. 15, § 3084.5, commences with an informal grievance, and then proceeds
24 through three levels of formal review, the last of which is the director’s level decision. (Id. at 8.)

25
26 Plaintiff contends that he exhausted his administrative remedies as to all claims, and in
27 fact appended a description of them to his first 602 grievance form, which was reviewed at the
28 second level of review (synonymous with the first level of formal review). (Pl.’s Opp. at 12.)

1 Prisoners must properly exhaust their administrative remedies before filing suit in federal
 2 court. “No action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or
 3 any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility
 4 until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a).
 5 Exhaustion is mandatory and is no longer left to the discretion of the district court. Woodford v.
 6 Ngo, 548 U.S. 81, 84 (2006) (citing Booth v. Churner, 532 U.S. 731, 739 (2001)).

7 Compliance with prison grievance procedures is all that is required to “properly exhaust.”
 8 Jones v. Bock, 127 S. Ct. 910, 922–23 (2007). The level of detail necessary in a grievance to
 9 comply with the grievance procedures will vary from system to system and claim to claim, but it
 10 is the prison’s requirements, and not the Prison Litigation Reform Act [42 U.S.C. § 1997e], that
 11 define the boundaries of proper exhaustion. Id. at 923. At SQSP, in order to exhaust the
 12 available remedies, an inmate must pursue his claim through all levels of review. See Cal. Code.
 13 Regs., tit. 15, § 3084.5.

14 Based on the record before it, the court concludes that plaintiff failed to exhaust the
 15 administrative remedies available to him at SQSP. Though plaintiff appended a list of issues he
 16 now presents in his federal complaint to his second level of review (synonymous with the first
 17 formal level of review), the record indicates that he properly presented only one issue in the
 18 administrative grievance process. That issue — whether defendant Dassel used derogatory
 19 language on March 10, 2003 — was the sole issue properly presented and exhausted. The claims
 20 plaintiff now brings in his federal complaint were not, however, properly presented to the
 21 administrative grievance process, and plaintiff was so informed at an early stage in the
 22 proceedings by SQSP authorities.⁵ Because SQSP’s requirements define the boundaries of
 23 proper exhaustion in this case, see Jones at 127 S. Ct. at 923, plaintiff’s federal complaint is
 24 barred. Accordingly, defendants’ motion will be granted.

25 CONCLUSION

26 Plaintiff having failed to exhaust all available administrative remedies, defendants’
 27

28 ⁵ Oddly, plaintiff admits that he withdrew “new issues” from his 602. (Pl.’s Opp. at 17.)

1 motion to dismiss (Docket No. 31) is GRANTED. Plaintiff's complaint is DISMISSED.


2 Plaintiff's motions for court-ordered legal supplies (Docket No. 18), for the voluntary
3 dismissal of the part of the complaint that is related to visitation with minor children and to
4 remove Exhibit 19 as confidential (Docket No. 19), to discover the pretrial reports generated by
5 confidential informants (Docket No. 22), to discover the identities of confidential informants
6 (Docket No. 23), for an in camera evidence hearing (Docket No. 25), for a "physical DNA
7 examination" of confidential informant (Docket No. 26), to discover the handwriting of a
8 confidential informant (Docket No. 27), for court-appointed experts (Docket No. 28), and for the
9 appointment of a special master (Docket No. 29) are DENIED AS MOOT. Plaintiff's motion to
10 deny defendants' motion to dismiss (Docket. No. 36) is DENIED.

11 Defendants' motion to strike plaintiff's opposition (Docket No. 34) is DENIED AS
12 MOOT.

13 This order terminates Docket Nos. 18, 19, 22, 23, 25, 26, 27, 28, 29, 31, 34 & 36. The
14 Clerk shall enter judgment, terminate all pending motions, and close the file.

15 **IT IS SO ORDERED.**

16
17 DATED: 3/16/09



RONALD M. WHYTE
United States District Judge